



Agenda Date: 1/23/04

Agenda Item: IV A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

I/M/O THE VERIFIED PETITION OF GLOBAL NAPS INC.)
FOR ARBITRATION PURSUANT TO SECTION 252(B))
OF THE TELECOMMUNICATIONS ACT OF 1996 TO)
ESTABLISH AN INTERCONNECTION AGREEMENT)
WITH VERIZON NEW JERSEY INC. F/K/A BELL)
ATLANTIC NEW JERSEY, INC.)

ORDER

DOCKET NO. TO02060320

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Telecommunications Act of 1996, 47 U.S.C. § 151, et. seq. ("Act") sets forth a national policy framework to establish a competitive and deregulated telecommunications environment. The Act imposes on incumbent local exchange carriers ("ILECs") the duty to negotiate in good faith with carriers requesting interconnection (competitive local exchange carriers or "CLECs") the terms and condition of agreements to fulfill their obligations under the 1996 Act, including, but not limited to, their duties to provide interconnection, unbundled access, resale, collocations of facilities, number portability, dialing parity, access to rights of way and reciprocal compensation. 47 U.S.C. § 251. Pursuant to the Act, Congress has delegated to the States the responsibility to resolve disputes regarding terms and conditions of interconnection agreements between telecommunication providers through mediation and arbitration, and to review and approve or reject such negotiated or arbitrated interconnection agreements. 47 U.S.C. § 252 (e)(1).

On June 2, 2002, Global NAPS, Inc. ("Global"), filed with the Board of Public Utilities ("Board") its verified petition for arbitration pursuant to Sections 252(b)(1) of the Act. On July 1, 2002, Verizon New Jersey, Inc. ("VNJ") filed its response to Global's verified petition. Pursuant to the procedures adopted on August 15, 1996, in the Board's Arbitration Order, Docket No. TX96070540, Alvin Weiss, Esq., was appointed as arbitrator to make recommendations to the BPU on the open issues in dispute between Global and Verizon.

BACKGROUND

On July 12, 2002 a prehearing conference was held by the arbitrator with both parties during which the procedure to be followed in the arbitration was established.

On August 5, 2002 Global filed a motion for partial summary judgment on four issues related to intercarrier compensation. VNJ responded to the motion on August 15, 2002.

On August 13, 2002 Global prefiled direct testimony of William Jerry Rooney and Lee L. Selwyn. On August 13, 2002, VNJ filed the prefiled direct testimony of Donald Albert, P. D'Amico, Karen Fleming, William Monsel, Jonathan Smith and Harold West, III. August 20, 2002 VNJ submitted the prefiled rebuttal testimony of Kevin C. Collins, Karen Fleming, Jonathan B. Smith and Harold E. West.

On August 23, 2002 VNJ filed motions to strike portions of the testimonies of Global's witnesses William J. Rooney and Lee L. Selwyn. The hearing in this matter took place on August 28, 2002. During the arbitration, VNJ moved to strike the testimony of Dr. Selwyn pertaining to cost analysis of VNJ's increased transportation operation as a result of Global's interconnection with VNJ. Arbitrator Weiss denied the motion to strike the testimony regarding cost analysis of VNJ's increased transportation operation. However, regarding Dr. Selwyn's testimony concerning reciprocal compensation, Judge Weiss granted VNJ's the motion to strike because the Arbitrator was bound by the ISP Remand Order and could not consider reciprocal compensation that should be in effect if the ISP Remand Order were not effective.

After receiving all the testimony, the hearings were concluded and a schedule for filing post-hearing submissions was adopted. On October 3, 2002 Global and VNJ filed their post-hearing briefs. On October 15, 2002, Global and VNJ filed their reply briefs.

On February 6, 2003, Judge Weiss forwarded his Interim Decision to Global, VNJ and the Secretary of the Board. VNJ filed Exceptions to the Interim Decision on February 19, 2003, in which they requested reconsideration of Issues 2 and 7. Global notified all concerned parties by email that it would not be filing a request for reconsideration at that time.

Summary of VNJ's Exceptions to the Interim Decision

VNJ contended the Board should adopt all but the portion of the Arbitrator's Decision that pertains to Issue 2, charges for transport to a single point interconnection. VNJ also sought the modification of part of the Arbitrator's findings concerning Issue 7: tariff references.

Global submitted a letter to the Board in response to the letter from VNJ dated February 26, 2003. VNJ, in response to the Global letter, stated that Global's not filing exceptions to the Arbitrator's decision constitutes a waiver of Global's right to then object to the Arbitrator's decision.

In response, Global argued that VNJ is aware both of the formal statement of procedures and the informal supplements that have evolved in this proceeding. Accordingly, Global stated it is incomprehensible to Global how VNJ could avail itself of a procedure that does not exist (exceptions prior to the time an agreement is filed) and then seek to impose serious consequences on Global for not following these nonexistent procedures.

Global requested that Judge Weiss reject VNJ's Exceptions. Global argued that such rejection of VNJ's Exceptions would result in the execution of an interconnection agreement, with each party

noting its objections and submission of the documents to the Board for review.

The Arbitrator's Interim Decision recommends that the parties' interconnection agreement include Global's proposal to make each party responsible for the costs associated with transporting traffic to the single point of interconnection ("POI") per LATA that Global selects. VNJ disputes this finding stating that it would excuse Global from paying for the costs associated with the increased transport that Global acknowledges it causes on VNJ's network, thereby requiring VNJ to subsidize Global's operations.

The relevant inquiry, according to VNJ is not the exact identification of how much Global's proposal will cost VNJ, but who bears responsibility for the undisputed increase in transport and switching costs that result from Global's selection of single POI in a LATA. VNJ argues that because Global causes these costs, Global should bear them.

VNJ sought an order that requires the parties to implement VNJ's Virtually Geographically Relevant Interconnection Point (VGRIP) proposal. If the Board does not order the parties to incorporate VNJ's VGRIP proposal, VNJ contends that the Board should direct the parties to supplement the agreement to make clear that the POI must be a technically feasible point on VNJ's network.

VNJ also sought modification of the Arbitrator's Interim Decision regarding Issue 7: tariff references. VNJ contends that the Board should not require VNJ to provide specially tailored notice to Global of pending tariff changes. VNJ opposes the Arbitrator's Interim Decision that "VNJ give direct notice to Global of proposed tariff changes filed with the Board. VNJ bases its argument on the premise that there is no evidence that the existing methods of notice of tariff filings are not working well. VNJ is concerned with the unsupported need for Global to have specially tailored tariff filing notices and the associated burdens of providing individual tariff notices to Global.

VNJ contends that the Arbitrator's Interim Decision gives Global a unique and unwarranted preference over every other carrier, and the public, all of whom have a statutorily prescribed role in the tariff making process. Accordingly, VNJ urges the Board to adopt the Decision to the extent that it incorporates tariff and other documents by reference into the contract, but to reject the recommendation that VNJ provide Global specialized notice of any tariff changes.

In connection with the resolution of Issue 7 tariff references, the Arbitrator's Interim Decision recommends the adoption of Global 's proposed §§ 2.1.1, 2.1.2, and 8.5 of the Interconnection Attachment. VNJ contends that there is nothing in the record to support the Arbitrator's Decision as it relates to these contract provisions and VNJ contends that this aspect of the recommendation is at odds with other recommendations in the Decision.

According to VNJ, the Arbitrator's Interim Decision resolves Issue 1 by directing the parties to adopt VNJ's proposed Interconnection Attachment § 2.1, contradicting its recommendation in connection with Issue 7 to adopt Global's position. To remedy this confusion, VNJ requests that the Board order the parties to adopt VNJ's proposed §§ 2.1 and 8.5 of the Interconnection Attachment consistent with the Decision's resolution of Issue 1 and 7.

After reviewing VNJ's Exceptions of Interim Decision and the newly adopted rules by the FCC, in the Final Decision, the Arbitrator modified the initial recommendations as to Issue 7, but retained the initial recommendations as to Issue 2.

Regarding issues 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12, the Arbitrator found the following:

Issue 1. Should either party be required to install more than one point of interconnection per LATA? Arbitrator Weiss held that the language in Section 2.67, POI (Point of Interconnection), and Interconnection Attachment Section 2.1 proposed by VNJ be adopted.

Issue 2. Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI? The Act requires an ILEC to provide for interconnection “at any technically feasible point within the carrier’s network” that is “at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection” “on rates, terms and conditions that are just, reasonable and nondiscriminatory. . . .” 47 U.S.C. § 251(c)(2) One of the purposes of the Act is to encourage competition, and in the absence of any definitive ruling by the FCC, the Arbitrator found Global is entitled to choose a single POI in each LATA at any technically feasible point. Although VNJ’s position concerning costs is a legitimate one, the adoption of VNJ’s proposal would in effect constitute an impairment of Global’s ability to elect a single POI, increasing the cost of the single POI to Global and making it more difficult for a CLEC to enter the market of an ILEC. The Arbitrator did not find any convincing evidence that the cost of requiring VNJ and Global to be responsible financially for the traffic on its side of the POI would be more than de minimus.

The Arbitrator recommended that the language proposed by VNJ in section 2.46 and the language proposed by Global in section 7.1, 7.1.1.1 and 7.1.1.2 of the Interconnection Attachment be adopted.

Issue 3. Should VNJ’s local calling area boundaries be imposed on Global, or may Global broadly define its own local calling areas? The Arbitrator recommended that Global be allowed to establish state wide or LATA-wide calling area for its customers. However, regardless of the retail calling options Global offers its customers, the Arbitrator did not change the existing way in which local calling areas have been defined by the BPU with the resulting intercarrier compensation based upon VNJ’s current local calling areas.

The Arbitrator recommended that the language proposed by VNJ in section 2.34, 2.57, 2.76, 2.84 and 2.92 of its Glossary and sections 6.2, 7.3.3 and 7.3.4 of the Interconnection Attachment be adopted and that language proposed by Global in section 2.47 Global’s Interconnection Attachment be adopted.

Issue 4. Can Global assign its customers NXX Codes that are “homed” in a central office switch outside the local calling area in which the customer resides?

Arbitrator Weiss found that Global should be permitted to assign NXX codes that are homed in a central office switch outside the local calling area in which the customer resides.

Issue 5. Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?

The Arbitrator held that the specific contract language contained in section 4.5 and 4.6 of VNJ’s contract language clearly addresses Global’s right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. Therefore, the Arbitrator recommended the adoption of the language proposed by VNJ in section 4.5 and 4.6 of the general Terms and Conditions and the language proposed by Global in section 2.74 of its Glossary.

Issue 6 Whether two-way trunking is available to Global at Global's request. VNJ proposed language in Section 2.2.3, 2.2.4, and 2.4.1-2.4.3 and 2.4.10 of the Interconnection Attachment, which identified operational areas that the parties must address to achieve a workable interconnection arrangement. The Arbitrator found that adoption of this language would not interfere with Global's decision as to whether to use two-way trunks.

Issue 7. Is it appropriate to incorporate by reference into the agreement other documents, including tariffs, instead of fully setting out those provisions in the agreement?

The Arbitrator recommended that Global's objection to the incorporation by reference of other documents, including tariffs into the agreement, be rejected. However, to ensure that Global has the opportunity to make any necessary objections to proposed tariff changes by VNJ, the Arbitrator recommended that VNJ give direct notice to Global of any proposed tariff changes filed with the Board.

The Arbitrator recommended the adoption of the language proposed by VNJ in Sections 1, 4.7, 6.5, 6.9, 41.1 and 47; Section 2.74 of its Glossary; Section 9 of its Additional Services; Sections 1, 2.1.3.3, 2.1.4, 2.1.6, 2.3, 2.4.1, 5.4, 8, 9.2.2, 10.1 and 10.6 of the Interconnection Attachment; Sections 1, 2.1 and 2.2.2 of Resale; Sections 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.2.6 and 12.11 of Unbundled Network Elements; Section 1 of Collocation; and Sections 1.5 and 2.2.2 of Pricing Attachment.

Issue 8. Should the interconnection agreement require Global to obtain excess liability insurance coverage of ten million dollars and require Global to adopt specified policy forms?

The Arbitrator held for VNJ. Based upon the Arbitrator's review, Section 21 of the General Terms and Conditions proposed by VNJ should be adopted in its entirety.

Issue 9. Should the interconnection agreement include language that allows VNJ to audit Global's "books, records, documents, facilities and system"?

The Arbitrator recommended that the language proposed by VNJ in section 7 of General terms and Conditions; Section 8.5.4 of Additional Service Attachment; and Sections 6.3 and 10.13 of the Interconnection Attachment be adopted.

Issue 10. Should VNJ be permitted to collocate at Global's facilities in order to interconnect with Global?

The Arbitrator held that VNJ should be afforded a reasonable opportunity to collocate on Global's facilities provided it is technically feasible and space is available. The Arbitrator recommended that the language proposed by VNJ in Section 2.1.5 of the Interconnection Attachment should be adopted.

Supplemental Issue 11. Should the parties' agreement recognize applicable law?

In the absence of any stay, the parties must recognize any change in law on its effective date. The Arbitrator recommended the language proposed by VNJ in section 4.7 of the General Terms and Conditions be adopted.

Supplemental Issue 12. Is Global only permitted access to UNEs that have been ordered unbundled?

The Arbitrator found Global's language to be vague and ambiguous. VNJ's proposed General Terms

and Conditions, Section 47, satisfy its obligation to Global and therefore the Arbitrator recommended its adoption.

Discussion

Pursuant to 47 U.S.C. §252(e)(1), the Act requires approval by the Board of any interconnection agreement adopted by negotiation or arbitration, and further requires the Board to approve or reject the agreement with written findings as to any deficiencies. The Act provides that the Board may reject an agreement adopted by negotiation or arbitration only if it finds that:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity;
- or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

[47 U.S.C. §252(e)(2)(A), (B)].

This comprehensive Agreement contains various rates, terms and conditions of interconnection of the networks of Global and VNJ, which are necessary for Global to provide, and receive reciprocal transport and termination of local telecommunications traffic within New Jersey.

Notwithstanding the standards for rejection referenced above, the Board is not prohibited from establishing or enforcing other requirements of State law in its review of an interconnection agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

The Interconnection Agreement dated January 7, 2002 will permit Global NAPS to resell VNJ local service, branded as Global service, and incorporates specific detail to existing interconnection, testing, and support systems. VNJ will provide services to Global including: access to VNJ databases and ordering systems; interconnection at various points in the VNJ network; collocation of Global's equipment in VNJ central offices; interconnection to other companies with whom Global is not directly connected; number portability, and the ability to purchase and combine unbundled network elements. The arrangements permit Global to offer local service to customers through several means, including reselling VNJ's local service, repackaging VNJ's network elements or interconnecting Global facilities to VNJ's facilities, or to Global's own facilities.

The Agreement consists of the issues which have been negotiated and arbitrated by VNJ and Global and related to the technical requirements, pricing, and general contractual concerns needed to connect one carrier with another.

Having reviewed the executed Agreement submitted and having considered the entire record

in this matter, the Board notes that the process outlined for arbitrations in this jurisdiction does not include a review of the Arbitrator's decision but rather provides for a review of the final agreement, which is a by-product of the arbitration process. See In the Matter of the Board's Consideration of Procedures for the Implementation of Section 252 of the Telecommunications Act of 1996, Order, Dkt. TX96070540 (August 15, 1996). The Board therefore REJECTS VNJ's demand for additional process.

The Board concludes that those positions of the Agreement that have been negotiated are consistent with the public interest, convenience and necessity, and that those positions of the Agreement do not discriminate against telecommunications carriers nor parties to the Agreement. The Board also concludes that the arbitrated portions of the Agreement are consistent with Sections 251 and 252(d) of the Act. Therefore, the Board FINDS that the Agreement meets the standards set forth in the Act. Accordingly, the Board HEREBY APPROVES the Agreement without modification.

Pursuant to 47 U.S.C. §252(h) of the Act, a copy of the Agreement will be made available for public inspection and copying within ten (10) days of the issuance of this Order. Subsequent amendments or modifications of the Agreement are subject to review and approval by the Board.

DATED: 01/26/04

BOARD OF PUBLIC UTILITIES
BY:

(signed)_____
JEANNE M. FOX
PRESIDENT

(signed)_____
FREDERICK F. BUTLER
COMMISSIONER

(signed)_____
CAROL J. MURPHY
COMMISSIONER

(signed)_____
CONNIE O. HUGHES
COMMISSIONER

(signed)_____
JACK ALTER
COMMISSIONER

ATTEST:

(signed)_____
KRISTI IZZO
SECRETARY